HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No. 1561 of 2001
(Old No. 1274 of 1998)

Vijay Kumar Gupta
S/o Shri Kishori Lal Gupta
House No. 1/501, New Bank Colony,
Police Station Kwarasi
District – Aligarh ...Appellant

Versus

State of Uttarakhand ...Respondent

Mr. Chandra Mauli Sah, Amicus Curiae for the appellant.
Mr. Amit Bhatt, Additional Government Advocate with Mr. M.A. Khan, Brief Holder for respondent-State.

Coram: Hon'ble J. C. S. Rawat, J.
Hon'ble Dharam Veer, J.

Per Hon'ble J.C.S. Rawat, J.

1. This appeal has been directed against the judgment and order dated 16.06.1998, passed by the then learned Sessions Judge, Pithoragarh in Sessions Trial No. 6 of 1994, whereby the appellant has been convicted & sentenced to twelve years R.I. and a fine of Rs. 1,00,000/- u/s 20 of Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter N.D.P.S. Act). It was further directed that in default of payment of fine, the appellant would have to suffer further three years R.I.

2. The prosecution story, in nutshell, is that S.I. Dinesh Kumar Verma alongwith other police officials was checking the vehicle at Devidhura Tri junction near the Forest Check Post on 31.03.1993. When the police raiding party was returning to the police station in the morning at about 4:05 a.m., the police raiding party saw a person coming from the side of Kedarnath on foot. When the person saw the police raiding party alighting from Gypsy, he started running away.

The Police raiding party became suspicious over the conduct of the person and started chasing him and caught him near the forest building on the road. When the person (appellant) was apprehended, he disclosed his name as Vijay Kumar Gupta and revealed that he was carrying 1 kg. Charas in a plastic bag with him. He was arrested at the spot and he was informed about his right to be searched in presence of some gazetted officer. But he declined the said offer and asked the raiding party to take his search themselves. Accordingly, the raiding party made a search on his person as well as bag carried by him. The police raiding party recovered charas from the bag carried by the appellant. Thereafter, a case was registered u/s 20 of the N.D.P.S. Act in the police Station Lohaghat. The matter was investigated and chargesheet Ex.Ka.4 was submitted before the Court.

3. The accused-appellant was charged by the learned Special Court and he denied the charges and claimed trial.

4. The prosecution is support of its case produced Head Const. Jagdish Chandra Bhatt PW1 who is a formal witness and has proved the Chick F.I.R. Ex.Ka.1 and G.D. entry of registration Ex.Ka.2. The prosecution has also adduced the evidence of Const. Pankaj Kumar PW2, Const. Radha Krishan PW3 and S.I. Dinesh Kumar PW4 who were the members of the police raiding party and in whose presence charas was recovered from the possession of the accused-appellant. Radra Singh Pal PW5 is the Investigation Officer of the case and he has submitted the chargesheet after completion of the investigation.

5. The accused-appellant was examined u/s 313 Cr.P.C. and pleaded not guilty to the offence and denied the averments made by the prosecution witness.

6. The learned Sessions Judge on appreciation of the evidence held accused-appellant guilty as mentioned above.

7. We have heard Shri Chadra Mauli Sah, Amicus Curiae for the appellant and Mr. Amit Bhatt, learned A.G.A. with Mr. M.A. Khan, Brief Holder for the State.

8. We have gone through the entire evidences on record and the judgment of the learned trial court. From the evidence of S.I. Dinesh Kumar PW4, Const. Pankaj Kumar PW2 and Const. Radha Krishan PW3, it is amply proved that that charas was recovered from the possession of the accused-appellant. The evidence of the prosecution is consistent. The defence has made a lengthy cross-examination to the prosecution witnesses but nothing could be elicited from their evidence. We have gone through the entire judgment and the findings recorded by the learned trial court and we do not find that there is any infirmity in the findings recorded by the learned trial court. We are completely in agreement with the findings recorded by the learned trial court.

9. Amicus Curiae for the appellant did not challenge the findings of the trial court with regard to the recovery of charas and propriety of the findings recorded by the trail court in this regard. But the Amicus Curiae for the appellant only challenged the judgment on the point of sentence awarded by the learned trial court. It was contended on behalf of the Amicus Curiae for the appellant that the

appellant has become blind during the trial. It was further contended that there was a recovery of 1 kg. Charas from the possession of the accused-appellant and the punishment awarded by the trail court does not commensurate with the facts and circumstances of the present case.

10. After due consideration of the submission made by the learned counsel for the parties, we are of the view that the sentence awarded by the learned trial court requires modification.

11. Accordingly, we convict the accused-appellant for a period of ten years R.I. instead of 12 years u/s 20 of the N.D.P.S. Act as awarded by the trial Court ad a fine of Rs. 1,00,000/-. In default of payment of fine the accused-appellant will have to undergo further period of one years R.I. instead of three years R.I.

12. The appeal is partly allowed to the above extent.

13. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months from the date of receipt of order.

(Dharam Veer, J.) **(J.C.S. Rawat, J.)**

Dated 1st June, 2007
Shiv